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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

SEP 12 1994

In the Matter of )

Equal Access and Interconnection )  
Obligations Pertaining to )  
Commercial Radio Services )

CC Docket No. 94-54  
RM-8012

**COMMENTS OF WILTEL, INC.**

September 12, 1994

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## SUMMARY

WilTel believes the regulations the Commission establishes in this proceeding will have wide ranging implications for the CMRS markets and for Commission regulation of emerging markets in general. The stakes involved are considerable: The difference between regulatory paths chosen here could be the difference between a fragmented system of incompatible networks and technologies and a "network of networks" involving various technologies available to a large universe of consumers. Specifically, WilTel urges the Commission to adopt a uniform program of equal access for all cellular providers and all actual or potential competitors of such carriers, including PCS and ESMR providers. This action is crucial to preserving the benefits of competition in markets such as enhanced and interexchange services and to expanding the benefits of that competition into the CMRS market. Far from being a concept of transitory utility, equal access is fundamental to basic Commission goals.

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**COMMENTS OF WILTEL, INC.**

**I. INTRODUCTION**

WilTel, Inc. ("WilTel") respectfully submits the following Comments in the above-captioned proceeding. WilTel believes the tentative conclusions expressed in the Commission's Notice of Proposed Rulemaking and Notice of Inquiry<sup>1</sup> if properly implemented and developed have the potential to yield significant public benefits in the development of the wireless market and beyond. Indeed, the regulations the Commission establishes in the commercial mobile radio services ("CMRS") market may have implications far beyond their apparent scope, serving as the foundation for future regulatory treatment of emerging telecommunications markets. Failure to implement equal access, however, could

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<sup>1</sup>See Equal Access and Interconnection Obligations Pertaining to Commercial Radio Services, Notice of Proposed Rulemaking and Notice of Inquiry, CC Docket No. 94-54, RM-8012, FCC 94-145 (July 1, 1994) ("CMRS NPRM").

result in decreased competition in both the CMRS and interexchange ("IX") markets, ultimately jeopardizing the prospects for a widely available "network of networks" with numerous technological and competitive options.

The tentative conclusions of the CMRS NPRM outline a balanced three-pronged program of equal access, interconnection, and resale that is designed to foster the development of the CMRS market. Of these elements, it is equal access that promises the greatest public benefits. As WilTel demonstrates below, far from being an outdated holdover from a bygone era, consistent rules establishing equal access across local access markets are essential to fundamental objectives of the Commission. It is rather the absence of uniform equal access requirements that presents the prospect of a return to a monolithic telecommunications system with few alternatives. WilTel urges the Commission to extend its tentative conclusions regarding cellular services to all CMRS providers ("CMRSPs")<sup>2</sup> and to promote equal access as a fundamental building block of its future policies.

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<sup>2</sup>As used by WilTel in these comments (unless the context indicates otherwise), the terms "CMRSP" and "CMRS" are limited to the cellular market and services potentially competitive with cellular services, including personal communications services ("PCS") and enhanced (or wide area) specialized mobile radio ("ESMR") services. All such services provide for real-time two-way wireless communications and have the potential to provide local and long distance segments.

## II. EQUAL ACCESS IS ESSENTIAL TO BASIC COMMISSION GOALS

The basic charge of the Commission is to foster an efficient, low-cost national and global telecommunications system that is available to all.<sup>3</sup> In the context of CMRS regulation the Commission has expressly recognized three broad objectives that can be seen as contributing to that end: (1) fostering merit-based competition (through similar regulation of similar competitors and through interconnection requirements),<sup>4</sup> (2) promoting infrastructure development (through stable, predictable, and procompetitive regulation),<sup>5</sup> and (3) enabling access to the "information superhighway" (through a broad definition of commercial mobile services as well as through the means used to achieve the first and second goals).<sup>6</sup>

Uniform equal access requirements are essential to these Commission goals. Experience in the landline markets has shown that mandatory equal access, rather than stifling the development of competitive forces, has unleashed those forces; the resulting public benefits include the reduction of long distance prices, the development of four national fiber optic

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<sup>3</sup>47 U.S.C. § 151.

<sup>4</sup>Regulatory Treatment of Mobile Services, GN Docket No. 93-252, Second Report and Order, ("CMRS Second Report") 9 FCC Rcd 1411, 1420 (1994).

<sup>5</sup>Id. at 1421.

<sup>6</sup>Id. at 1421-22.

networks, and increased responsiveness of interexchange carriers to consumer needs.

Although equal access requirements developed out of the AT&T antitrust consent decree,<sup>7</sup> they reflect -- with a decidedly procompetitive focus -- the general common carrier obligations that lie at the core of Title II of the Communications Act. Those concerns find their most basic expression in Sections 201 and 202 of Title II, 47 U.S.C. §§ 201 & 202. It is no coincidence that Congress has required the Commission to enforce those Sections (along with Section 208) in the CMRS market.<sup>8</sup> Those obligations, and specifically their expression in equal access requirements, remain vital to fostering the development of a rapid and efficient telecommunications network that is available to all.

The basic precepts of equal access are non-discriminatory interconnection, non-discriminatory carriage, and non-discriminatory choice of carriers. The former two requirements are designed to foster competition by preventing anticompetitive discrimination between carriers by other carriers. The latter requirement is designed to ensure that consumers are given the full benefit of that competition. Without these requirements there is the real threat that the

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<sup>7</sup>United States v. American Tel. & Tel. Co. ("MFJ" or "Modification of Final Judgment"), 552 F.Supp. 131, 228 (D.D.C. 1982), aff'd sub nom., Maryland v. United States, 460 U.S. 1001 (1983).

<sup>8</sup>47 U.S.C. § 332(c) (1993).

"network of networks" will be fragmentary and underdeveloped, that telecommunications consumers will have fewer options, and that competition will decrease. Equal access thus is ultimately equal access (or more precisely full access) for telecommunications consumers. As such, it is a concept ideally suited to the Commission's basic goals.

### **III. A UNIFORM PROGRAM OF EQUAL ACCESS IS ESSENTIAL TO ENSURE WIRELESS CUSTOMERS ARE AFFORDED THE FULL BENEFIT OF COMPETITION**

Analysis of the CMRS market<sup>9</sup> in particular makes clear a uniform program of equal access is essential. While the wireless local access market may presently constitute only a fraction of the total local access market, it could, if mismanaged, prove to be the point of release of tremendous anticompetitive pressures that already exist and that loom on the horizon. Further, without equal access, competition for CMRS end users will be denied the benefit of the significant competition that already exists in other markets.

#### **A. The Wireless Market is Not Competitive and is Likely to Remain Noncompetitive for the Foreseeable Future**

There is no question that the current wireless market is characterized by an absence of meaningful competitive constraints. The Commission has classified the cellular

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<sup>9</sup>See supra note 2.



duopolies as dominant, i.e., possessing market power.<sup>10</sup> Just this year the Justice Department provided an extensive analysis of the cellular market and found it to be noncompetitive.<sup>11</sup> The Bell Operating Companies ("BOCs") themselves have viewed those markets as attractive precisely because of that lack of competition.<sup>12</sup>

With respect to other forms of wireless service such as PCS, it is not meaningful to talk of competition since these have yet to be introduced on any significant scale.<sup>13</sup> Once they are generally available the Commission will have to examine empirical data to determine whether market forces can provide an adequate check on anticompetitive and discriminatory behavior.<sup>14</sup> The number and effectiveness of new competitors cannot be determined at this point -- nor can the Commission predict with any accuracy the cross-elasticity

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<sup>10</sup>See Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities, Fifth Report & Order, 98 FCC 2d 1191, 1204 n.41 (1984) ("Fifth Report").

<sup>11</sup>See Memorandum of United States in Response to Motions for Generic Wireless Waivers at 14-19, United States v. Western Electric, Inc., Civil Action No. 82-0192 HHG (D.D.C.) (filed July 25, 1994) ("DOJ Comments").

<sup>12</sup>See id. at 10 n.13 (citing Southwestern Bell internal documents characterizing the cellular duopolies as "'highly attractive' because of their 'absence of significant price competition.'"); id. at 15-18 (discussing other Bell Operating Company internal memoranda with similar conclusions).

<sup>13</sup>See, e.g., DOJ Comments at 24-25.

<sup>14</sup>One BOC has indicated in internal memoranda that it believes there will not be effective competition from new entrants prior to 1996. DOJ Comments at 15 (citing Southwestern Bell memoranda).

of the various wireless services.

Further, with respect to local access for IXC's, it is even more problematic whether adequate competition will develop to prevent anticompetitive behavior. This is so because the real competition is for the end users (wireless or landline) and not the much smaller market comprised of access customers. The upshot of this fact is that the local carrier serving an end user remains a monopolist with respect to facilities between IXC's and the end user.<sup>15</sup> Significant discrimination and anticompetitive behavior can thus continue with respect to local access sold to interexchange carriers ("IXC's") even where there is some amount of competition for the CMRS end user. Finally, to the extent local access does develop as an independent sellers market, there can be little question it will be dominated on the buying side by the

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<sup>15</sup>See generally, Joseph Gillan & Peter Rohrbach, Diversity or Reconcentration?: Competition's Latent Effect, Pub. Util. Fort., June 15, 1994, at 20. Gillan and Rohrbach have analogized competitive local service providers to independent telephone companies. Joseph Gillan & Peter Rohrbach, The Local Exchange: Regulatory Responses to Advance Diversity, Pub. Util. Fort., July 15, 1994, at 32. No one would argue that independent LECs control bottleneck facilities between IXC's and the LECs' customers; yet, it is superficially appealing to view the emergence of competitive local service providers as meaning that IXC's will benefit from competition in the access market. The independent LEC analogy is valid, however. In the IXC access market, a local provider with an exclusive franchise to serve customers in exchanges representing 10% of a LATA's end users is not significantly different from a competitive local carrier that controls access to 10% of the customers scattered throughout that LATA; both carriers control a bottleneck that all IXC's must use to terminate calls to the customers served or to provide originating service for such customers.

interexchange carrier that currently purchases over half of all access, AT&T.

Thus, although the technology of local access may be in the process of changing, that change does not promise similar change in the fundamental economics of those, essentially noncompetitive, markets. Fundamentally, the Commission must recognize that in the foreseeable future the provider of local exchange service -- whatever form that may take -- has the potential to limit choices of the consumer, and may leverage this power to limit competition.

**B. Without Equal Access, Public Benefits will be Limited by the Least Competitive Market, CMRS**

The competitiveness of the interexchange market, in spite of the continued dominance of a single firm, is perhaps the preeminent success of the Commission's procompetitive policies. That success in turn presents the Commission with the opportunity to leverage and direct the development of the decidedly less (and primarily not) competitive local market. Uniform equal access requirements for all local providers, including CMRSPs, provide the means to harness the competitiveness of the IX market in such a fashion. Equal access requirements that were instrumental to the relative success of the interexchange market thus are also (rather unsurprisingly) essential to extending similar benefits to the CMRS market. Equally clear, if equal access is not implemented, CMRS end users will be denied, unnecessarily, the

benefits of the competitive interexchange market.<sup>16</sup>

More concretely, without equal access interexchange carriers will be favored not on the basis of merit to the end user (i.e., in terms of quality and price), but on the very possibly inconsistent basis of the CMRSPs' maximization of profit: Unregulated CMRSPs will discriminate in favor of IXC's (including themselves) with which they are affiliated or in whom they otherwise have an interest. Thus without equal access, many IXC's will be effectively unable to compete for the CMRSPs' end users; for such end users the competitiveness of the IX market will be rendered meaningless.<sup>17</sup> There is no plausible policy justification for this lessening of the benefits of competition.

#### **IV. THE PUBLIC BENEFITS TO BE DERIVED FROM EQUAL ACCESS FAR OUTWEIGH THE COSTS**

The capital outlays that would be called for now under a program of equal access are vastly outweighed by the public benefits that will be derived. The Commission has accumulated substantial evidence regarding the numerous benefits of equal

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<sup>16</sup>It is important to note that WilTel's comments in this regard are also applicable to the benefits of competition in the enhanced services market -- or indeed any other discreet telecommunications market. However, for brevity (and because it is the most obvious example) WilTel has cast its discussion only in terms of the interexchange market.

<sup>17</sup>DOJ Comments at 19; cf. CMRS NPRM ¶ 41 ("It is not always clear . . . that lower costs for the cellular carrier necessarily translate into lower prices for the end user.").

access. The CMRS NPRM recognizes four broad categories of those benefits: increased consumer choice and IXC competition,<sup>18</sup> increased access to networks for both end users and telecommunications providers,<sup>19</sup> the development of new services by IXCs based upon competitive merit (not the ability to strike an exclusive deal with a cellular carrier),<sup>20</sup> and finally the development of the regulatory parity that Congress has recognized as a goal in the regulation of wireless markets.<sup>21</sup>

On the other hand, there is no quantitative indication, other than the strenuous cries of the CMRSPs, that the cost of implementing equal access will be substantial in comparison with the clear benefits to be derived. First, it bears emphasizing that a significant portion of the cellular market is or will be subject to equal access requirements independent of the Commissions actions. The BOCs already must provide equal access under the MFJ, and AT&T/McCaw will be subject to equal access requirements under the terms of the proposed consent decree with the Department of Justice.<sup>22</sup> Thus the

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<sup>18</sup>CMRS NPRM ¶ 36.

<sup>19</sup>Id. ¶ 37.

<sup>20</sup>Id. ¶ 38.

<sup>21</sup>Id. ¶ 39.

<sup>22</sup>See DOJ Comments at 24. The willingness of AT&T/McCaw to enter into this consent decree indicates that at least one significant player in the CMRS market does not consider equal access requirements to be an insuperable burden to providing a profitable service.

cost of implementing equal access for these carriers is, or at least should be, eliminated from any cost benefit analysis by the Commission.

The cost of equal access to CMRSPs that are not yet operational will be lower than those for established CMRSPs since hardware and software modifications will not be required. Further, if competition develops sufficiently to force CMRSPs to offer their customers a meaningful choice of interexchange carriers, this cost will effectively already be built into the market. Nothing is achieved by not providing CMRSPs with accurate economic signals at the outset (for example regarding the type of required switching technology). What is gained, however, by uniform equal access requirements is protection against otherwise certain anticompetitive conduct should the market fail to develop competitive pressure for equal access. Moreover, a uniform program of equal access established now, at the outset of the development of the CMRS market, will actually diminish the cost of implementation in the future.<sup>23</sup>

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<sup>23</sup>The conversion of local exchange carrier ("LEC") landline networks to equal access thus is not an accurate gauge of equal access implementation costs in the CMRS context. LEC networks at the time of divestiture and Commission mandated equal access were fully developed and essentially "closed" systems, never intended to be interconnected with competing carriers. In contrast, the incremental cost of implementing equal access when a network is being constructed (e.g. for PCS), or as part of an overall network upgrade (e.g. to digital cellular) is relatively low compared with the cost of reengineering a fully developed closed network.

For precisely the same reason operational CMRSPs should be required to implement equal access. As discussed below, the impact of the costs of implementation (admittedly higher for this group of CMRSPs) can be brought into parity by establishing a uniform period of implementation for all operational non-equal access CMRSPs.

## **V. IMPLEMENTATION OF MEANINGFUL EQUAL ACCESS**

Effective equal access rules must contain certain fundamental requirements. First, access sold to IXCs (including the CMRSP itself) must be equal in quality, type, and price. This necessarily requires nondiscriminatory opportunities for IXC interconnection with the CMRSPs' networks. WilTel thus urges the Commission to require CMRSP's to designate at least one point of interconnection readily accessible to all interexchange carriers in each equal access region.<sup>24</sup> On the other hand, CMRSPs should not be permitted to require more than one point of interconnection in order for an IXC to achieve full and equal access to the CMRSP's network.

Second, end users should be able to select their own IXC and the selection process should not be unfairly biased in favor of or against any IXC or group of IXCs. This would prohibit a CMRSP from selling wireless exchange service at

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<sup>24</sup>As noted below, WilTel believes those regions should be coextensive with LATAs.

rates or other terms dependent upon whether the customer obtains IX service from a particular IXC.<sup>25</sup> On a more programmatic level, presubscription and balloting procedures should be implemented for established CMRSPs. The Commission has ample experience with implementing presubscription and balloting procedures in the wireline context. There thus should be no serious obstacle to their implementation in the CMRS context.

Finally, end users must be able to reach their selected interexchange carriers using identical calling methods; no IXC should be reachable through a calling method that is more advantageous than those for reaching other IXCs. This equality can and should take the form of the 1+ access end users have rightly come to expect.

In addition to these fundamental requirements,<sup>26</sup> two more specific implementation issues should be noted.

Equal Access Regions. WilTel urges the Commission to adopt equal access regions (regions out of which equal

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<sup>25</sup>Cf. DOJ Comments at 32 (recognizing such a safeguard as one of the preconditions to BOC resale of interexchange services to BOC cellular customers). This requirement of course would not prevent CMRSPs from passing on legitimate savings on interexchange rates. See also DOJ Comments at 37-38 (discussing need for unbundling and nondiscriminatory billing capabilities).

<sup>26</sup>In the absence of any of them CMRSPs will have the ability to eliminate IXC competition. This ability is obvious where a CMRSP is permitted to foreclose or limit end user choice of IXCs. Further, that ability is no less potent if end users are permitted to select their IXCs, but unequal access costs or means of reaching IXCs skew demand in favor of a particular IXC.



access/handoff requirements apply) to be coextensive with LATAs. Such a delineation has a number of advantages. First, there is already considerable regulatory experience in dealing with equal access requirements in the context of LATAs. Second, LATAs are well-defined regions with no associated licensing requirements or costs. Finally, use of LATAs in the CMRS context will foster regulatory uniformity and administrative efficiency.

Timing of Implementation. WilTel urges the Commission to require existing CMRS providers to offer equal access at the earliest possible time. However, given that the terms of the proposed consent decree between the Department of Justice and AT&T allow for a 21-month implementation period, WilTel would support the same time frame for other CMRS providers. New entrants, however, need not and should not be permitted a similar implementation period. As noted above, it would be both inefficient and illogical not to require from the outset that which will be eventually required of all providers.

## VI. CONCLUSION

Equal access has the potential to play a crucial role in the fostering of competition and network connectivity (and their associated benefits) in the CMRS market and beyond. WilTel, urges the Commission to extend uniform equal access requirements to all CMRSPs that compete or potentially may compete with cellular services. Such action is necessary in

order to prevent CMRS customers from being denied the near-term benefits of competition, and ultimately from being denied the benefits of the network of networks which equal access will foster.

Respectfully submitted,  
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September 12, 1994

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## CERTIFICATE OF SERVICE

I, Cecille R Eugenis, hereby certify that on September 12, 1994, a copy of the foregoing "**Comments of WilTel, Inc.**" in CC Docket No. 94-54, was served (except as indicated below) by first class mail, postage prepaid, on the following:

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